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NOTIFICATION.

No. LA.4-972|57. *Dated, Trivandrum, 22nd July, 1957.*

The following Bill together with the Statement of Objects and Reasons, is published, as ordered by the Speaker under Rule 73 of the Rules of Procedure and Conduct of Business in this Assembly.

Legislature Secretariat,
Trivandrum.

V. KRISHNAMOORTHI,
Secretary, Legislative Assembly.

L. A. Bill No. 22 of 1957.

THE KERALA HIGH COURT BILL, 1957.

A Bill to make provision regulating the business and the exercise of the powers of the High Court of the State of Kerala.

Preamble.—WHEREAS it is expedient to make provision regulating the business and the exercise of the powers of the High Court of the State of Kerala;

BE it enacted in the Eighth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala High Court Act, 1957.

(2) It shall come into force on such date as the State Government may, by notification in the Gazette, appoint.

2. *Definition.*—In this Act, "High Court" means the High Court of the State of Kerala.

3. *Administrative control of the High Court.*—The administrative control of the High Court shall vest in the Chief Justice.

4. *Regulation of business in the High Court.*—The conduct of business in the High Court, including the constitution of Benches and the posting of cases shall, subject to the other provisions of this Act, be regulated by the Chief Justice.

5. *Powers of Single Judge.*—The powers of the High Court in relation to the following matters may be exercised by a Single Judge, provided that the Judge before whom the matter is posted for hearing may adjourn it for being heard and determined by a Bench of two Judges:—

(1) Determining in which of several courts having jurisdiction a suit shall be heard.

(2) Admission of an appeal *in forma pauperis.*

(3) Exercise of original jurisdiction under any law for the time being in force.

(4) Exercise of the powers under section 115 of the Code of Civil Procedure, 1908 and under section 22 of the Kerala Small Cause Courts Act, 1957.

(5) Any matter of an interlocutory character in appeals and other proceedings.

(6) Admission of an appeal presented after the expiry of the period allowed by the law of limitation.

(7) Admission of an appeal from the judgment or order of any criminal court,

(8) Exercise of the power to revise the proceedings of any criminal court:

Provided that in the exercise of such power a Single Judge shall not impose a sentence of death or imprisonment for life.

(9) Exercise of the powers conferred by sections 426 and 498 of the Code of Criminal Procedure, 1898.

(10) Exercise of the powers under—

(i) section 24 of the Code of Civil Procedure, 1908;

(ii) section 526 and section 526A of the Code of Criminal Procedure, 1898; and

(iii) clause (1) of article 226 of the Constitution of India except where such power relates to the issue of a writ of the nature of *habeas corpus;*

(iv) articles 227 and 228 of the Constitution of India.

(11) Exercise of the power under sub-section (2) of section 19 of the Kerala Civil Courts Act, 1957.

(12) A report under section 438 of the Code of Criminal Procedure, 1898.

(13) An appeal—

(a) from a judgment or order of a criminal court, except in cases in which the appellant or a person tried with him has been sentenced to death or imprisonment for life:

Provided that in the exercise of such power a Single Judge shall not impose a sentence of death or imprisonment for life;

(b) from an original decree when such appeal relates to costs only;

(c) from an order under section 104 of the Code of Civil Procedure, 1908, except an order of the kind mentioned in clause (h) of sub-section (1) of the said section or in clauses (c), (d) or (j) of Rule 1 of Order XLIII of the First Schedule to the said Code;

(d) from an appellate decree or order;

(e) under section 75 (3) of the Cochin Insolvency Act, VII of 1098 or section 77 (1) of the Travancore Insolvency Act, 1108 (VIII of 1108) or section 75 (3) of the Provincial Insolvency Act, 1920 (V of 1920);

(f) under section 476B of the Code of Criminal Procedure, 1898.

6. *Powers of a Bench of two Judges.*—The powers of the High Court in relation to the following matters may be exercised by a Bench of two Judges, provided that if both Judges agree that the decision involves a question of law they may order that the matter or question of law be referred to a Full Bench:—

(1) Any matter in respect of which the powers of the High Court can be exercised by a Single Judge.

(2) An appeal—

(a) from a decree or order of a civil court, except those coming under section 5;

(b) from the judgment of a criminal court in which a sentence of death or imprisonment for life bas been passed on the appellant or on a person tried with him.

(3) A reference:—

(a) under section 113 of the Code of Civil Procedure, 1908;

(b) under section 307, section 374 or section 432 of the Code of Criminal Procedure, 1898;

(4) An application under Order XLV, Rule 2, of the First Schedule of the Code of Civil Procedure, 1908.

(5) An application for the exercise of the powers conferred by section 491 of the Code of Criminal Procedure, 1898 or by clause (1) of article 226 of the Constitution of India where such power relates to the issue of a writ of the nature of *habeas corpus*.

(6) An appeal from any original judgment, order or decree passed by a Single Judge.

(7) All matters not expressly provided for in this Act or in any other law for the time being in force.

7. *Appeal from appellate judgment of Single Judge.*— An appeal shall lie to a Bench of two Judges from a judgment or order of a Single Judge in the exercise of original jurisdiction and, where the Judge who passed the judgment declares that the case is a fit one for appeal, an appeal shall lie to a Bench of two Judges from a judgment of a Single Judge in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a subordinate court .

8. *Constitution of Full Bench.*—A Full Bench of the High Court shall consist of an uneven number of Judges not less than three.

9. *Procedure on reference to Full Bench.*—When a question of law is referred to a Full Bench, the Full Bench may finally decide the case or return it with an expression of its opinion upon the question referred for final adjudication by the Bench which referred the question or, in the absence of either or both of the referring Judges, by another Bench.

10. *Cases to be heard by Full Bench under direction by Chief Justice.*—Notwithstanding anything contained in this Act, the Chief Justice may direct that any matter be heard by a Full Bench.

11. *Powers of Vacation Judge.*—(1) During the adjournments of the High Court under section 12 the Chief Justice shall nominate a Single Judge of the High Court for the hearing of all matters which require to be immediately or promptly

dealt with and such Judge shall have all the powers of the High Court, except in cases in which such power must be exercised under the provisions of any law by more than one Judge.

(2) It shall be competent for the Chief Justice during any such adjournment of the High Court to constitute a Bench of two Judges or a Full Bench for the hearing of any case.

12. *Adjournment of the High Court.*—(1) The High Court may adjourn for a period not exceeding sixty days for summer, seven days for Onam and ten days for Christmas respectively in each year.

(2) The dates of commencement and termination of each adjournment shall be notified in the Gazette.

13. *Sittings of the High Court.*—The High Court shall not ordinarily sit on saturdays, or on any other days notified by the High Court in the Gazette as court holidays.

14. *Power to make rules.*—The High Court shall have power to make rules not inconsistent with this Act or any other law for the time being in force to regulate the practice and procedure in the High Court. Such rules shall be published in the Gazette.

15. *Repeal.*—The Travancore-Cochin High Court Act, 1125 (V of 1125) is hereby repealed.

STATEMENT OF OBJECTS AND REASONS.

Section 52 of the States Reorganisation Act, 1956, has provided that the High Court of a new State shall have, in respect of any part of the territories included in that State, all such original, appellate and other jurisdiction as, under the law in force immediately before the appointed day, is exercisable in respect of that part of the said territories by any High Court for an existing State. Hence, under this provision, the High Court for Kerala can exercise in respect of the Travancore-Cochin portion of the Kerala State all the powers and jurisdiction which the former Travancore-Cochin High Court could exercise and in respect of the Malabar District, referred to in sub-section (2) of Section 5 of the States Reorganisation Act, 1956, all the powers and jurisdiction which the Madras High Court could exercise immediately before the 1st November, 1956.

2. The enactments which regulate the exercise of the powers and jurisdiction referred to above, apart from special statutes in respect of particular matters are,—

(i) the Travancore-Cochin High Court Act, 1125;

(ii) the Letters Patent relating to the Madras High Court;

(iii) the Madras Appellate Jurisdiction Rules;

(iv) the Madras Ordinary Original Jurisdiction Rules.

It is highly necessary that the High Court should have the same powers and jurisdiction both in respect of the Travancore-Cochin portion and the remaining part of the State and a unified law specifying these powers and jurisdiction should be enacted. The Bill is intended for this purpose.

3. The Bill provides for regulating the business and the exercise of the powers of the High Court and is based on the provisions contained in the Travancore-Cochin High Court Act and the Madras Appellate Jurisdiction Rules.

V. R. KRISHNA IYER.

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